IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.467 of 1992

Decided on : November 2, 2007

State of H.P. **…Appellant.**

Versus

Naresh Kumar and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. G.D. Verma, Senior Advocate, with Mr. Romesh Verma, Advocate.

Surjit Singh, Judge(Oral)

Respondents, numbering five, were charged with and tired for offences punishable under Sections 120-B, 302 read with Section 34 IPC, 201 read with Section 302 and 34 IPC for allegedly conspiring to kill one Ajit Singh and then murdering Ajit Singh in furtherance of that conspiracy and also destroying the evidence of murder.

2. It was alleged by the prosecution that respondent Mohan Lal had a strong motive to kill the deceased, because there was a dispute between him and the deceased about a piece of land which he (respondent Mohan Lal) agreed to sell to deceased Ajit Singh, but lateron the respondent backed out and a litigation was going on between the deceased and said respondent Mohan Lal and two other respondents, namely Roop Ram and Sohan Lal, because Mohan Lal

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Whether reporters of the local papers may be allowed to see the judgment?

after backing out from agreement with Ajit Singh had been planning to sell the said piece of land to Roop Ram and Sohan Lal. Mohan Lal, Sohan Lal and Roop Ram allegedly engaged Naresh Kumar and Rakesh Kumar to eliminate deceased Ajit Singh.

3. Deceased Ajit Singh was working as a mason with the Horticulture University, Nauni. On 25.11.1990, he left his place in village Gadoh for Nauni and did not return. His wife, PW-1 Nirmala Devi, waited for him all the night. Next morning, she deputed one of her brothers, namely PW-14 Nek Ram, to look for the deceased. Dead body of deceased Ajit Singh was found in a *Ghasni* land forming part of village Anu.

4. Police was informed. A report was lodged with the Police by PW-2 Paras Ram, Pradhan of Gram Panchayat Shamroor, who was informed of the spotting of the dead body by one Devi Singh (not examined). During the course of the investigation, Police collected evidence with regard to the following circumstances:

1. Respondents Mohan Lal, Sohan Lal and Roop Ram had the motive to kill deceased.
2. All the five respondents were spotted in the house of respondent Roop Ram around 5 p.m. on 25.11.1990.
3. Respondents Naresh Kumar and Rakesh Kumar were spotted near the place of occurrence around 8 p.m.
4. Blood of the deceased was found at a place situated on the upper side of the site where the dead body was spotted and the distance between the two spots was 897 feet, indicating that after having been murdered at the site where the blood was spotted, the dead body was carried to the *Ghasni* in village Anu.
5. Blood stains were found on the pant Ex. P-12 of respondent Naresh Kumar.
6. Respondents Naresh Kumar and Rakesh Kumar made disclosure statements leading to the discovery of *Dandas*

and piece of stone allegedly used as weapons of offence.

7. Naresh Kumar made a disclosure statement leading to the discovery of wrist watch, a torch and a pair of shoes of the deceased.
8. Injuries were found on the persons of respondents Rakesh Kumar and Naresh Kumar on 29.11.1990, when medico legal examination was conducted after their arrest by the Police and such injuries were opined to be 4-5 days old.

5. All the respondents were challaned on the completion of the investigation. The concerned Magistrate, after complying with the requirement of Section 207 of the Code of Criminal Procedure, committed the case to the Sessions Court. Respondents were charged, as aforesaid. Ultimately, all of them were acquitted. State is aggrieved by the judgment of acquittal passed by the Sessions Court.

6. We have heard the learned Additional Advocate General and gone through the record of the case. The circumstances which the prosecution sought to establish, in our considered view, do not stand proved beyond reasonable doubt. Reasons for our view are as follows.

Circumstance No.1

7. No doubt, it stands established that there was a dispute between the deceased and respondents Mohan Lal, Roop Ram and Sohan Lal with respect to a piece of land which Mohan Lal agreed to sell to the deceased, but that cannot be said be so strong a motive as to prompt them to conspire to take the life of the deceased. The case was filed by the deceased against the said respondents, under Section 145 of the Code of Criminal Procedure, per application copy Ex. PW-12/A, in July, 1989. Nothing has come on record indicating

that after the filing of the aforesaid application Ex. PW-12/A and before the death of the deceased there had been any quarrel between the parties or any threat was ever given by the respondents to the deceased, on account of the filing of the aforesaid application. In any case, the motive by itself does not prove the charge of conspiracy of murder.

Circumstance No.2

8. The evidence led by the prosecution with respect to this circumstance is in the form of the testimony of PW-14 Nek Ram, one of the brothers of PW-1 Nirmala Devi, who claims to be the wife of the deceased. Trial Court has observed that in fact Nirmala Devi was not the legally wedded wife of the deceased but she had started living with the deceased as his wife against the wishes of her parents and brothers and, therefore, even the father and the brothers of PW-1 Nirmala Devi could be said to have a motive to eliminate the deceased. The observation of the trial Court is based on the testimony of Nirmala Devi herself, who has admitted in the cross-examination that her father and brothers were not happy about her living with the deceased as his wife, even though PW-14 Nek Ram himself says that he and all his other brothers and even his father were happy about her marriage with the deceased. We see no reason to disagree with this observation of the trial Court, which is based on the testimony of Nirmala Devi herself. Therefore, much reliance cannot be placed upon the testimony of PW-14 Nek Ram that he saw all the five persons at the house of respondent Roop Ram on the relevant date at 5.10 p.m. Moreover, doubt is cast about the genuineness of his testimony by the testimony of another witness, namely PW-11 Chattar Singh, who says that he had spotted respondents Naresh Kumar and

Rakesh Kumar going towards Nauni at 5.15 p.m., that is to say within five minutes of their being spotted at the house of respondent Roop Ram by PW-14 Nek Ram.

Circumstance No.3

9. It is on the basis of the testimony of PW-11 Chattar Singh that the learned Additional Advocate General has urged that respondents Naresh Kumar and Rakesh Kumar were spotted near the place of occurrence. No doubt, the witness has stated that he had seen the two respondents together going towards Nauni, but nothing has surfaced in their testimony or in the testimony of other witnesses, examined by the prosecution, that the place where the two respondents were spotted by this witness is close to the place of occurrence.

Circumstance No.4

10. In our considered view, the circumstance in no way connects the present respondents with the commission of the crime. In any case, the allegation that the deceased was done to death at a different place, at a distance of about 900 feet, and then the dead body was carried to the *Ghasni* land of village Anu, is falsified by prosecution's own evidence. The prosecution has examined two witnesses, namely PW-3 Leela Devi and PW-4 Rattan Singh, to prove that the cries of the deceased were heard erupting from the *Ghasni* of village Anu, that is to say the site where the dead body was lying, around 7 p.m. Now, when the deceased had been killed at a different place about 900 feet away from the site where the dead body was spotted, the question of the deceased crying at or near the site where the dead body was spotted could not have arisen.

Circumstance No.5

11. Blood stains were found on the pant (Ex. P-12) of *Safari* suit of respondent Naresh Kumar by the Chemical Examiner. It is true that the Chemical Examiner, vide report Ex. PW-26/B, reported that the stains of blood were found at the pant of the *Safari* suit allegedly produced by respondent Naresh Kumar during the course of the investigation, vide Memo. Ex. PM, but he does not say whether the blood was of human being or any other animal. In any case, there is no evidence that at the time of the alleged killing of the deceased respondent Naresh Kumar was wearing the said pant Ex. P-12, even though the prosecution examined two witnesses, who had seen Naresh Kumar in the evening of the fateful day, namely PW-3 Leela Devi and PW-4 Rattan Singh. None of these two witnesses said that respondent Naresh Kumar was wearing the aforesaid pant when they saw him.

Circumstance 6.

12. Respondent Rakesh Kumar is alleged to have made a statement leading to the discovery of the pieces of a *danda* and the other respondent Naresh Kumar is alleged to have made a statement leading to the discovery of a piece of stone, which were used as weapons of offence. The statements were allegedly made in the presence of witnesses PW-8 Sada Nand, PW-4 Rattan Singh and PW-1 Nirmala Devi. Sada Nand did not support the prosecution version when in the witness box as PW-8. PW-4 Rattan Singh also did not support the prosecution version. It was only Nirmala Devi who stated that the respondents were interrogated and made some statements but stated that she did not know what statements were made by them. She stated that she had signed the recorded

statements of the two respondents, Ex. PD and Ex. PE. Her testimony leads to nowhere, because she has not specifically said that the respondents made the statements about the alleged weapons of offence. Thus, this circumstance also does not stand proved.

Circumstance No.7.

13. Next circumstance is that respondent Naresh Kumar made a statement leading to the discovery of a wrist watch and a torch of the deceased. The statement was allegedly made in the presence of PW-8 Sada Nand, PW-4 Rattan Singh and PW-1 Nirmala Devi and record of the statement is Ex. PF. PW-8 Sada Nand does not say that any statement was made by Naresh Kumar in his presence. PW-1 Nirmala Devi, though says that the statement, record of which is Ex. PF, bears her signature, she does not say that any disclosure statement about the torch and the wrist watch was made by respondent Naresh Kumar. It is only the bald statement of Investigating Officer, namely PW-25 Tilak Raj, that the respondent had made the statement leading to discovery of torch Ex. P-5 and wrist watch Ex. P-6. The Investigating Officer is not corroborated even by Nirmala, the wife of the deceased.

Circumstance No.8.

14. As regards the injuries found on the persons of respondents Rakesh Kumar and Naresh Kumar by PW-7 Dr. A.S. Verma, at the time of their medico legal examination on 29.11.1990, the witness himself has stated in the cross-examination that the injuries were simple in nature and could have been even older than 4-5 days duration, opined by him and that agriculturists often have such injuries on their persons, which they sustain while doing manual work in the fields.

15. In view of the abovestated position, we see no reason to differ with the findings recorded and conclusions drawn by the trial Court. Consequently, the appeal is dismissed.

(Surjit Singh), J

November 2, 2007(sd) **(Surinder Singh), J**